

S.D.N.Y. – N.Y.C.  
03-cr-1364  
16-cv-4771  
Kaplan, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 14<sup>th</sup> day of October, two thousand twenty-two.

Present:

Pierre N. Leval,  
Denny Chin,  
Joseph F. Bianco,  
*Circuit Judges.*

USDC SDNY  
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United States of America,

*Appellee,*

v.

21-1324

Otis Parkes,

*Defendant-Appellant.*

Appellant moves for the Court to terminate the previously imposed stay of this appeal, grant a certificate of appealability, summarily vacate the district court orders denying Appellant's 28 U.S.C. § 2255 motion, and remand for further proceedings. Appellee consents to the requested relief. Upon due consideration, it is hereby ORDERED that the stay is TERMINATED; the motion for a certificate of appealability is GRANTED on the issue of whether Appellant's 18 U.S.C. § 924(c) conviction remains supported by any valid crime-of-violence predicate; the district court's orders denying relief under 28 U.S.C. § 2255 (S.D.N.Y. 16-cv-4771, docs. 12 & 13; S.D.N.Y. 03-cr-1364, docs. 213 & 214) are VACATED in light of *United States v. Taylor*, 142 S. Ct. 2015 (2022); and the case is REMANDED for further proceedings. See 28 U.S.C. § 2253(c); see also *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); 28 U.S.C. § 2106; *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) (discussing circumstances warranting summary vacatur and remand).

It is further ORDERED that the mandate shall issue forthwith. *See* Fed. R. App. P. 41(b). The district court should decide in the first instance whether the case law underlying Appellant's claim may be applied retroactively to cases on collateral review and whether Appellant's § 924(c) conviction is still supported by any valid crime-of-violence predicate.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk of Court

  


A True Copy

Catherine O'Hagan Wolfe, Clerk

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United States Court of Appeals, Second Circuit

  
